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ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

June 12, 2008

Mark Andrews, Chief Legal Officer
Molina Healthcare, Inc.
2277 Fair Oaks Blvd., Suite 440
Sacramento, CA 95825

Dear Mr. Andrews:

Pursuant to Arizona Administrative Code ("A.A.C.") section R9-22-604(G), this letter serves as the decision of the procurement officer in response to the protest of Request for Proposal ("RFP") number YH09-0001 filed by Molina Healthcare, Inc. ("Molina") which was received by the AHCCCS Administration on May 29, 2008.

That protest is denied for several reasons.

A. "Undisclosed Criteria"

Molina's protest initially alleges that the AHCCCS Administration evaluated proposals based on "undisclosed criteria" contrary to A.A.C. section R9-22-602, subsections (A)(4) and (B)(2). This is not correct. Those subsections of the rule provide that the RFP must include "the factors used to evaluate a proposal" and that the proposals must be evaluated based on the factors listed in the RFP. The AHCCCS Administration has complied with those requirements.

There are no Arizona State Court decisions that interpret the level of detail required to comply with the AHCCCS procurement rule or the similar provision of the Arizona Procurement Code (See Arizona Revised Statutes, section 41-2534, subsections (E) and (G)). However, federal procurement law also employs a similar concept. Specifically, based on 10 U.S.C. section 2305, subsections (a)(2)(A), (a)(3)(A), and (b)(1), the Federal Acquisition Regulations, at 48 C.F.R. § 15.203(a)(4), requires that federal RFP's describe the "factors and significant subfactors that will be used to evaluate the proposal and their relative importance." Numerous procurement decisions by the Comptroller General of the United States have held that "although agencies are required to identify all major evaluation factors, they are not required to identify all areas of each factor which may be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria." *Matter of: D.F. Zee's Fire Fighter Catering*, B-280767.4, Comptroller General of the United States, 99-2 Comp. Gen. Proc. Dec. P62, September 10, 1999; see also, *Matter of: Colmek Systems Engineering*, B-291931.2, Comptroller General of the United States, 2003 U.S. Comp. Gen. LEXIS 100; 2003 Comp. Gen. Proc. Dec. P123, July 9, 2003 ("In performing the evaluation, however, the agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by the stated evaluation criteria."); *Matter of: Israel Aircraft Industries, Ltd., MATA Helicopters Division*, B-274389; B-274389.2; B-274389.3, Comptroller General of the United States, 1996 U.S. Comp. Gen. LEXIS 644; 97-1 Comp. Gen. Proc. Dec. P41, December 6, 1996 ("A solicitation need not identify each element to be considered by the agency during the course of the evaluation where such element is intrinsic to the stated factors or subfactors."); accord *Hydro Eng'g v. United States*, 37 Fed. Cl. 448, 471 (1997) ("In order to show entitlement to relief on a claim that the agency used undisclosed evaluation factors, plaintiff must prove that the government evaluated the proposals received on a significantly different basis than announced in the solicitation and that plaintiff has been prejudiced as a result.").

The evaluation factors used by AHCCCS are clearly delineated in Section H of the RFP, pages 112 – 113. The recitation of these factors fully satisfies the requirements of A.A.C §R9-22-602. It also is consistent with the level of information commonly provided by other Arizona agencies and other states when conducting competitive procurements. It is also clear that the individual evaluation criteria that Molina has alleged to be “undisclosed” factors are criteria that are reasonably related to, logically encompassed by, and intrinsic to the evaluation factors explicitly stated in the RFP. As such, the use of the individual criteria would not be considered undisclosed factors in either the state or federal procurement systems.

Using Molina’s first protested item listed in Section A (question 30) as an example, whether an offeror coordinates its health promotion efforts with similar national initiatives is a rational and logical criteria for differentiating one offeror’s proposal from another.

The second protested item (question 31) deals with the award of points for describing a culturally competent approach to outreach efforts related to offeror’s Early Periodic Screening, Diagnostic and Treatment (EPSDT) and Maternal Child Health (MCH) program. It is reasonable for a State with significant Latino and Native American populations and which covers a significant portion of the births in the state to give preference to proposals that include a clear commitment to culturally competent EPSDT and MCH outreach programs.

Similarly, with respect to Molina’s third complaint regarding the evaluation criteria addressing separate dedicated staff for EPSDT and MCH functions (question 35), it is rational, logical, and appropriate for the Medicaid program, with half of the members being children and which pays for over half of the births in the state, to prefer a proposal that contains a clear commitment to maintain dedicated staff for each function over a proposal that does not.

With respect to the complaint concerning evaluation criteria for submission requirement 62, the Administration disagrees with your statements that the “focus” of the requirement is the process from identification to resolution. The submission requirement separately requests a description of the communication process with other departments regarding the grievance process. Furthermore, the submission requirement directs the offeror to Section D, Paragraph 26, which includes a requirement that a successful contractor must “...provide reports on the Grievance System as required in the Grievance System Reporting Guide...” Again, it is reasonable and rational for the Administration to prefer offerors that commit to using grievance system data for detecting systemic problems over offerors who simply recite the minimum requirements of Section D, Paragraph 26.

Molina’s final allegation of “undisclosed criteria” relates to submission requirement 63 which requests a description of how the offeror intends to “monitor the effectiveness of the Member Services Division.” It is reasonable and rational for the Administration to view more favorably an offeror who commits to a monitoring method that attempts to identify systemic problems (“trends”) and does so more frequently than the minimum interval set forth in the RFP requirements for monthly reporting.

In each of these cases, the submission requirement and the specifics of the evaluation tool, are consistent with and inherently related to the identified factor they purport to measure. Neither the language of the applicable state rule, nor any state or federal law regarding procurement requires that the agency explicitly identify in detail every criteria used to differentiate between offerors.

B. “Scoring Errors”

The following is a point by point response to each of the arguments made in Section B of the Molina May 29, 2008 protest letter regarding alleged errors in the scoring process.

Submission Requirement 13

Molina asserts that it should be awarded additional points for its response to this submission requirement because the evaluation criteria were undisclosed. Further, Molina argues that the evaluation criteria exceed the requirements of the Policy which was provided as reference to Offerors. This simply repeats the arguments previously made which have already been addressed

Decision: No additional points are awarded.

Submission Requirement 17

Molina asserts it should be awarded 1 additional point because the proposal does describe staff with adequate experience in Quality Management (QM), and 2 additional points for staff being dedicated solely to Quality Improvement or Quality Management.

Upon review of the proposal, AHCCCS has decided to award the one point for adequate staff experience.

AHCCCS disagrees that the proposal adequately describes that specific staff are dedicated solely to QI and solely to QM. The QI Director is described as having a large span of responsibility for both functions, and the staff positions that report to the QI Director are described, but their functions are not assigned specifically to either Quality Improvement or Quality Management. This is consistent with how all bidders were evaluated.

Decision: 1 additional point is awarded.

Submission Requirement 22

Molina asserts that it should be awarded 3 points for demonstrating sustained statistically significant improvement in a HEDIS or HEDIS-like measure. The submission requirement instructed bidders to provide numerators, denominators and statistical significance of change. Molina indicated though placement of an asterisk and footnote that its results were statistically significant, but did not provide the precise level of statistical significance of change as required for a full evaluation.

As part of the evaluation of a bidder's ability to improve performance, AHCCCS examined the accuracy and completeness of the submitted statistical analysis. This is important because AHCCCS requires contractors to continuously monitor their own performance through application of analytical techniques such as those required in this submission item. Molina's failure to respond completely to the submission requirement did not allow AHCCCS to test Molina's competency in this area. Therefore, no points were awarded. This is consistent with how all bidders were evaluated.

Decision: No additional points are awarded.

Submission Requirement 31

Molina asserts they should be awarded one point because Molina addresses cultural competency in the proposal. However, Molina does not address culturally competent approaches to health promotion and outreach for EPSDT services in response to this submission requirement. The Molina protest letter asserts that AHCCCS should have taken into account information in the proposal other than in the specific response to this question. As bidders were informed in advance, AHCCCS only awarded points if the evaluation criteria were in the response to the submission item being evaluated. Bidders were advised repeatedly they could not exceed three pages per item response, and information elsewhere in the proposals would not be sought out and cross-referenced. For instance, Section I, Paragraph 14 of the RFP requires that responses to each submission requirement must be limited to three single spaced pages of 11 point font except where the Instructions explicitly permitted or required otherwise. Also, bidders were

advised of this restriction during the Question and Answer process. Finally, Attachment J to the RFP required offerors to specify the exact pages of the proposal where the response could be found. AHCCCS evaluated all the pages Molina identified as responsive to each submission requirement at the time of scoring.

AHCCCS evaluated each response independently, and only awarded points if the evaluation criteria were in the response to the submission criteria being evaluated. This is consistent with how all bidders were evaluated.


Decision: No additional points are awarded.

Conclusion:

The raw scores for each of the major categories and each question were assigned weights that were determined prior to the receipt of any proposals. After weighting, the highest possible score was 100. Although, as a result of this decision 1 point was added to Molina's raw score, after recalculating the weighting of the raw scores, Molina's final score changed from 67.31 to 67.42. This does not change Molina's rank as the 7th place bidder in Maricopa County.

The protest is denied, and the decision not to award Molina a contract stands. In accordance with A.A.C. R9-22-604 (I) you may file an appeal about the procurement officer's decision within five (5) days from the date the decision is received.

Sincerely,



Michael Veit
Procurement Officer

C Tom Standring